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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,177	12/17/2001	Clemence K. Dartey	MCP-300	3307

27777 7590 03/19/2002  
AUDLEY A. CIAMPORCERO JR.  
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ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

EXAMINER
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TRAN, SUSAN T

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 03/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/023,177

Applicant(s)

Dartey et al.

Examiner

Susan Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above, claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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### **DETAILED ACTION**

Receipt is acknowledged of applicant's Preliminary Amendment A filed 12/17/01.

#### ***Claim Rejections - 35 U.S.C. § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 rejected under 35 U.S.C. 102(b) as being anticipated by Mothes et al. US 5,961,707.

Mothes teaches alcohol-containing granules coated with waxes, cellulose, gelatin, lactose, or starches (column 3, lines 45-51). The alcohol-containing granules can be incorporated in dry soups, sauces, desserts, and beverages (column 3, lines 53-59). Although Mothes is silent as to the teaching of the intended use being claimed, e.g., use of the encapsulated alcohol to reduce cholesterol in a vertebrae, the intended use is inherent since Mothes obtains the same result from the use of encapsulated alcohol as additives useful in dry soups, sauces, desserts, and beverages.

2. Claims 1-6, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Cain et al. WO 98/47385.

Cain teaches a fat emulsion comprising fatty acid residue, phospholipid, and long chain alcohol encapsulated in wax, preferably alcohol having 26-30 C atoms (pages 2, lines 14 through

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page 4, lines 1-12). The fat emulsion further comprising fats, e.g., stearin, or oils (page 5, lines 1-16). The fat emulsion can be incorporated in food products, e.g., margarine (examples 1-3).

***Claim Rejections - 35 U.S.C. § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mothes et al.

Mothes is relied upon for the reason stated above. Mothes is silent as to the teaching of long-chain alcohol. However, it would have been obvious for one of ordinary skill in this art to use any alcohol, which will include long-chain alcohol, fatty alcohol, or aliphatic alcohol. The expected result would be low dust content and free-flowing encapsulated alcohol granules useful in food products.

4. Claims 1-8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mothes et al., in view of Cain et al.

Mothes is relied upon for the reason stated above. Mothes is silent as to the teaching of long-chain alcohol.

Cain is relied upon for the reason stated above. Cain also teaches long-chain alcohol incorporated in food products, and can be used to provide simultaneously cholesterol lowering

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properties (page 2, lines 14-24). Thus, it would have been prima facie obvious for one of ordinary skill in the art to modify Mothes's alcohol-encapsulated granules using the long-chain alcohol in view of the teaching of Cain. The reason for this modification is to obtain a food product containing long-chain alcohol encapsulated in polymer. The expected result would be a healthier food product containing encapsulated long-chain alcohol useful in lowering cholesterol.

#### ***Pertinent Arts***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Laguna Granja et al., Redding, Jr., and Ueda are cited as being of interest for the teaching of alcohol in food products.

#### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600  
*TK Page*